



Federal Communications Commission
Washington, D.C. 20554

APR 9 1998

EX PARTE OR LATE FILED

RECEIVED

APR 13 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Cass Ballenger
U.S. House of Representatives
2182 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Ballenger:

Thank you for your inquiry on behalf of your constituent, N. Erskine Smith, Mooresville, North Carolina, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in his community. Your constituent's letter refers to issues being considered in three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comment on a Petition for Further Notice of Proposed Rule Making filed by the National Association of Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comment on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your constituent's letter, as well as this response, will be placed in the record of all three proceedings and will be given full consideration.

No. of Copies rec'd 8
List ABCDE

At the same time, the Commission is actively pursuing initiatives that we hope will render any Commission action limiting State and local authority unnecessary. Commission staff, working with the Commission's Local and State Government Advisory Committee, is bringing together representatives of industry and municipal governments to discuss mutually acceptable solutions to the challenges posed by facilities siting. Chairman Kennard has stated that preemption of local zoning authority should be a remedy of last resort, and that the Commission should not consider preemption until the possibilities for constructive dialogue have been exhausted.

Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,



for Steven E. Weingarten
Acting Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

cc: CWD

Dockets (2)

John Conwell

j:\congress\9707429

CASS BALLENGER

10TH DISTRICT, NORTH CAROLINA

CONSTITUTIONAL WHIP
REPUBLICAN STEERING COMMITTEE

COMMITTEE ON EDUCATION
AND THE WORKFORCE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS
(CHAIRMAN)

EMPLOYER-EMPLOYEE RELATIONS

INTERNATIONAL RELATIONS COMMITTEE

SUBCOMMITTEE ON WESTERN HEMISPHERE

SUBCOMMITTEE ON INTERNATIONAL
OPERATIONS AND HUMAN RIGHTS

**Congress of the United States
House of Representatives**

Washington, DC 20515-3310

November 12, 1997

2182 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3310
202-225-2576
cass.ballenger@mail.house.gov

DISTRICT OFFICES:

P.O. BOX 1830
3511 LOTH AVENUE DRIVE, NE
HICKORY, NC 28603
704-327-6100
1-800-477-2576 TOLL FREE

P.O. BOX 1881
2554 EMMESVILLE CLEMENS ROAD
SUITE 107
CLEMMONS, NC 27012
910-766-9455

Honorable William Kennard
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Dear Chairman Kennard:

I am writing on behalf of a constituent of mine, Mr. Erskine Smith, who is the Planning Director for the Town of Mooresville, North Carolina.

Mr. Smith is concerned about a proposed rulemaking by the Federal Communications Commission regarding the federal preemption of local zoning laws dealing with cellular telephone and broadcast towers. Although I realize the formal comment period for this matter was closed on October 30, 1997, I respectfully request that you consider Mr. Smith's comments before finalizing your decision. I have enclosed a copy of Mr. Smith's letter to me with this correspondence.

Thank you for your attention in this matter. I would appreciate a written response which I may share with Mr. Smith.

Sincerely,

Cass

CASS BALLENGER
Member of Congress

CB:me
Enclosure

2112971

238623

Town of Mooresville

NORTH CAROLINA

October 28, 1997

TELEPHONE
(704) 663-3333

POST OFFICE BOX 878
MOORESVILLE, NORTH CAROLINA 28115

Representative Cass Ballenger
8 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative:

We are writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

Cellular Towers - Moratoria: Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

Page Two

Federal Communications Commission

October 28, 1997

building permit, zoning or other). Any permit request is automatically deemed granted if the municipality doesn't act in this time frame, even if the application is incomplete or clearly violates local law. Also, the FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC. All appeals of zoning and permit denials would go to the FCC, not to the local courts.

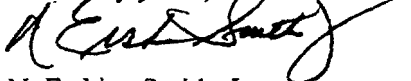
This proposal is astounding when broadcast towers are some of the tallest structures known to man - over 2,000 feet tall, taller than the Empire State Building. The FCC claims these changes are needed to allow TV stations to switch to High Definition Television quickly. However, the *Wall Street Journal* and trade magazines state there is no way the FCC and broadcasters will meet the current schedule anyway, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

These action represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise, that never saw a tower it didn't like.

Please do three things to stop the FCC: First, write new FCC Chairman, William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT 97-197, MM Docket 97-182 and DA 96-2140; Second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC, from many members of Congress; and Third, oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objections to them: Barrie Tabin at the National League of Cities, 202-626-3194; Eileen Huggard at the National Association of Telecommunications Officers and Advisors, 703-506-3275; Robert Fogel at the national Association of Counties, 202-393-6226; Kevin McCarty at the U.S. Conference of Mayors, 202-293-7330; and Cheryl Maynard at the American Planning Association, 202-872-0611. Feel free to call them if you have questions.

Very truly yours,



N. Erskine Smith, Jr.
Planning Director
(704) 662-3188 office
(704) 663-7039 fax

NES/iem